



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0360; FRL-9968-90-Region 4]

Air Plan Approval;

Alabama: Prevention of Significant Deterioration Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of revisions to Alabama's State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), on May 8, 2013, and August 23, 2016. The portions of these SIP revisions that EPA is finalizing approval of relate to the State's Prevention of Significant Deterioration (PSD) permitting program. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective **[Insert 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0360. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Febres can be reached by telephone at (404) 562-8966 or via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 2013 and August 23, 2016, ADEM submitted SIP revisions for EPA's approval that include changes to Alabama's PSD permitting regulations, among other changes. In a notice of proposed rulemaking published on August 15, 2017 (82 FR 38660), EPA proposed to approve certain portions of these submittals that make changes to ADEM Administrative Code Rule 335-3-14-.04 - "Air Permits Authorizing Construction in Clean Areas (Prevention of Significant Deterioration Permitting (PSD))," which applies to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA.

Alabama's May 8, 2013, SIP submittal includes changes to Rule 335-3-14-.04 to address

the Federal rule entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}): Amendment to the Definition of ‘Regulated NSR Pollutant’ Concerning Condensable Particulate Matter,” 77 FR 65107 (October 25, 2012) (hereinafter referred to as the PM_{2.5} Condensables Correction Rule),¹ and plantwide applicability limits (PALs) for greenhouse gases (GHGs) as allowed in the Federal rule entitled “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits,” 77 FR 41051 (July 12, 2012) (hereinafter referred to as the GHG Step 3 Rule).² In addition, the SIP submittal includes changes to the definition of GHGs in Rule 335-3-14-.04 and Rule 335-3-16 (regarding major source operating permits) to address EPA’s July 20, 2011 rule deferring PSD requirements for carbon dioxide (CO₂) emissions from bioenergy and other biogenic sources (hereinafter referred to as the “Biomass Deferral Rule”).³ Alabama’s May 8, 2013, SIP submission also includes the following changes to other Alabama rules: changes to the definition of Volatile Organic Compounds (VOCs) at Rule 335-3-1-.02; changes to the incorporation by reference (IBR) of the Federal New Source Performance Standards in Chapter 335-3-10 and National Emissions Standards for Hazardous Air Pollutants in Chapter 335-3-11; and changes regarding transportation conformity provisions at Rule Chapter 335-3-16.

¹ Given the corrections to the federal definition of “particulate matter emissions” in the PM_{2.5} Condensables Correction Rule, EPA is removing the note regarding “particulate matter emissions” in the table entry for Rule 335-3-14-.04 at 40 CFR 52.50(c). In addition, EPA is removing the note regarding PM_{2.5} Significant Impact Levels (SILs) in the table entry for Rule 335-3-14-.04 at 40 CFR 52.50(c) because, on October 9, 2014, ADEM submitted a letter to EPA withdrawing these SILs from EPA’s consideration as included in a May 2, 2011, SIP submittal.

² For background information on GHG permitting, including the GHG Step 3 Rule, see 82 FR 38662.

³ Emissions of CO₂ from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon (e.g., calcium carbonate) and biologically-based material (non-fossilized and biodegradable organic material originating from plants, animals or micro-organisms, including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

Alabama's August 23, 2016, SIP submittal includes changes to Rule 335-3-14-.04 and Rule Chapter 335-3-16 to remove the treatment of GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) in PSD and title V permitting requirements.⁴ The submittal also withdraws the portion of the State's May 8, 2013, SIP submittal that revises Rule 335-3-14-.04 to address the Biomass Deferral Rule and makes changes to the GHG Step 3 language proposed in Alabama's May 8, 2013, submittal.

In the August 15, 2017, proposed rulemaking, EPA proposed to approve only the portions of the May 8, 2013, submittal that make changes to the GHG PAL provisions pursuant to the GHG Step 3 rule and the portions of the August 23, 2016, submittal that discontinue regulation of GHGs as an air pollutant for the specific purpose of determining whether a source is a major source (or a modification thereof) in PSD and title V permitting requirements and that make changes to the GHG Step 3 language proposed in Alabama's May 8, 2013, submittal. EPA did not propose any action on the remaining portions of these submittals. The details of Alabama's SIP revisions and the rationale for EPA's action are further explained in the notice of proposed rulemaking. Comments on the proposed rulemaking were due on or before September 14, 2017. EPA did not receive any comments on the proposed action, adverse or otherwise.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ADEM Administrative Code Rules 335-3-14-.04(1)(k), 335-3-14-.04(2)(a)(ii), and 335-3-14-.04(b)4, state effective on November 25, 2014. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this

⁴ i.e., removing regulation of "GHG-only" sources.

preamble for more information). Therefore, these materials have been approved by EPA for inclusion into Alabama's SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.⁵

III. Final Action

EPA is finalizing approval of portions of Alabama's May 8, 2013, and August 23, 2016, SIP submittals that revise the PSD permitting program at Rule 335-3-14-.04 - "Air Permits Authorizing Construction in Clean Areas (Prevention of Significant Deterioration Permitting (PSD))" by removing language regulating GHG-only sources and by adding language to the PAL provisions.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

⁵ 62 FR 27968 (May 22, 1997).

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate Matter, Volatile organic compounds.

Dated: September 21, 2017.

Onis “Trey” Glenn, III

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart B—Alabama

2. In § 52.50, the table in paragraph (c) is amended under “Chapter No. 335-3-14 Air Permits” by revising the entry for “Section 335-3-14-.04” to read as follows:

§ 52.50 Identification of plan.

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(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter No. 335-3-14 Air Permits				
**	**	*	*	*
Section 335-3-14-.04	Air Permits Authorizing Construction in Clean Air Areas [Prevention of Significant Deterioration Permitting (PSD))	11/25/2014	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register citation]	
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[FR Doc. 2017-21605 Filed: 10/6/2017 8:45 am; Publication Date: 10/10/2017]